

September 17, 2007

John Davis
204 North Lafayette
Cloverdale, Indiana 46120

*Re: Formal Complaint 07-FC-250; Alleged Violation of the Open Door Law by the
Cloverdale Town Council*

Dear Mr. Davis:

This is in response to your formal complaint alleging the Cloverdale Town Council ("Council") violated the Open Door Law ("ODL") (Ind. Code §5-14-1.5) by conducting an emergency meeting failing to meet the criteria set forth in the ODL for holding such a meeting. I find that the Cloverdale Town Council violated the ODL.

BACKGROUND

In your complaint you allege that on July 27, 2007 you were notified the Council intended to hold an emergency meeting that day. You inquired of the Clerk whether the subject matter met the criteria in the ODL for holding an emergency meeting, and the Clerk indicated the Council President indicated the Town attorney had indicated it did meet the criteria. When the meeting was under way, you learned the water plant operator had failed a drug test, a discussion of which was the purpose of the meeting. You assert that the Town utility manager indicated he had suspended the operator and that the utility manager had the authority to hire a replacement. You assert the meeting does not meet the criteria established in I.C. §5-14-1.5-5(d) to conduct an emergency meeting. You filed your complaint on August 17. You requested priority status but did not allege any of the criteria listed in 62 IAC 1-1-3, so priority status was not granted.

The Town did not respond to your complaint upon my invitation to do so.

ANALYSIS

It is the intent of the Open Door Law that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute, in order that the people may be fully informed. I.C. §5-14-1.5-1. Except as provided in section 6.1 of the Open Door Law, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. I.C. §5-14-1.5-3(a).

The Council is clearly a governing body of a public agency for the purposes of the Open Door Law. I.C. §5-14-1.5-2. As such, except where authorized by statute, the meetings of the Council must be conducted openly and with proper notice to the public. I.C. §5-14-1.5-3.

An executive session may be held only in an instance listed in I.C. §5-14-1.5-6.1. An executive session may be held to discuss records classified as confidential by state or federal statute. I.C. §5-14-1.5-6.1(b)(7). An executive session may be held to discuss a job performance evaluation of individual employees. I.C. §5-14-1.5-6.1(b)(9).

Public notice of the date, time, and place of any meetings, executive sessions, or of any rescheduled or reconvened meeting, shall be given at least forty-eight hours (excluding Saturdays, Sundays, and legal holidays) before the meeting. I.C. §5-14-1.5-5(a). Public notice of executive sessions must state the subject matter by specific reference to the enumerated instance or instances for which the executive sessions may be held under subsection (b). I.C. §5-14-1.5-6.1(d).

If a meeting is called to deal with an emergency involving actual or threatened injury to person or property, or actual or threatened disruption of the governmental activity under the jurisdiction of the public agency by any event, the time requirements of notice under this section shall not apply, but

- (1) news media which have requested notice of meetings must be given the same notice as is given to the members of the governing body; and
- (2) the public must be notified by posting a copy of the notice according to this section. I.C. §5-14-1.5-5(d).

Here you learned that an emergency executive session would be held on the same day you were notified. The meeting was held to address the water plant operator's failed drug test. You do not allege the subject matter was not appropriate for an executive session or that the notice did not properly identify the specific instance in the ODL which would allow an executive session. The issue you present is whether an emergency meeting was appropriate. Because the Town did not respond to your complaint at my invitation to do so, I am basing my opinion on the facts you have presented.

The ODL allows an emergency session, which essentially means a meeting without the required 48-hour notice, only to deal with an emergency involving actual or threatened injury to person or property or actual or threatened disruption of governmental activity under the jurisdiction of the public agency by any event. I.C. §5-14-1.5-5(d). Here the plant operator failed a drug test. The utility manager suspended the operator. You indicate the utility manager had the authority to suspend the operator and to hire a replacement without a meeting of the Council. You indicate the Council was still able to stay in compliance with the Indiana Department of Environmental Management's requirement for a licensed operator to oversee the water plant up to the time the operator was dismissed. You indicate that as of the date you filed your complaint, the Town still has not hired a new operator, further demonstrating that there was no threat of disruption of governmental activity.

In your complaint you indicate what you believe to be the argument of the Council regarding the emergency meeting, but I did not receive a response from the Council. Absent that, and based on the facts you have presented, it is my opinion that since the utility manager had the authority to address the personnel issues and since I do not have any evidence there was

a threat of disruption of governmental activity, the Council violated the ODL when it held the emergency meeting for a reason not listed in I.C. §5-14-1.5-5(d).

CONCLUSION

For the foregoing reasons, I find that the Cloverdale Town Council violated the Open Door Law.

Best regards,

A handwritten signature in cursive script that reads "Heather Willis Neal".

Heather Willis Neal
Public Access Counselor

cc: Don Sublett, President, Cloverdale Town Council